

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ANTHONY AMADO,

Defendant and Appellant.

B206733

(Los Angeles County  
Super. Ct. No. LA009665)

APPEAL from an order of the Superior Court of Los Angeles County, Michael A. Latin, Judge. Affirmed.

William D. Farber, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Jose Anthony Amado appeals from the trial court's order denying his motion to vacate the judgment entered following his plea of guilty to the sale or transportation of marijuana (Health & Saf. Code, § 11360, subd. (a)). We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. Facts.*<sup>1</sup>

At approximately 6:30 p.m. on January 10, 1992, Los Angeles Police Officer Rubio Marcos was driving down Arminta Street in the City of Los Angeles. Amado was standing on the sidewalk in front of an apartment complex at 11134 Arminta. Marcos stopped and asked Amado where he could get a “ ‘20,’ ” or \$20 worth of narcotics. Amado responded that he only had “ ‘dime buds,’ ” or \$10 worth of marijuana. Marcos said he would take a “dime bag,” then waited while Amado went back into the apartment complex to get it. Approximately two minutes later, Amado returned, got into the front passenger seat of Marcos's car and handed him a Ziplock baggie containing a green leafy substance resembling marijuana. Marcos, in turn, gave to Amado a pre-recorded \$10 bill.

The green, leafy substance was later analyzed by Jason Wasserman, an expert forensic chemist, and determined to contain 1.85 grams net weight of marijuana.

### *2. Procedural History.*

Following a preliminary hearing, on January 24, 1992 Amado was held to answer for the sale or transportation of marijuana in violation of Health and Safety Code section 11360, subdivision (a). On May 18, 1992, he entered into a negotiated plea agreement

---

<sup>1</sup>

The facts have been taken from the transcript of the preliminary hearing.

under the terms of which he was to plead guilty to the alleged offense and the trial court was to grant him three years felony probation. In addition, the court could not impose more than 60 days in county jail. However, if he were to violate probation, he could be sentenced to up to one year in county jail or be sent to prison for up to four years. The district attorney then advised Amado: “If you’re not a citizen of this country, this conviction could be used as a basis to cause you to be deported, to prevent you from reentering the country if you leave, or from becoming a citizen or a lawful resident in the future. Do you understand all the consequences of your conviction?” Amado answered, “I do.”

After waiving his right to a jury or court trial, his right to confront and cross-examine the witnesses against him, his right to subpoena witnesses and present a defense and his privilege against self-incrimination, Amado pleaded guilty to the sale or transportation of marijuana. The trial court found that Amado had “knowingly, intelligently, and understandingly given up his constitutional rights; that his plea [was] made freely and voluntarily, with an understanding of the nature and consequences thereof [and that there was] a factual basis for the plea.”

The trial court accepted the terms of the plea bargain and suspended imposition of sentence. Various terms and conditions of the bargain included that Amado pay a restitution fine of \$100 and a lab analysis fee of \$50.

On July 21, 2004, Amado made a motion to vacate the judgment of conviction entered on May 18, 1992. The motion was made on the ground that the trial “court [had]

failed to advise [Amado] of an adverse immigration consequence attendant to the entry of [the] plea, as mandated by” Penal code section 1016.5, subdivision (a).<sup>2</sup> Amado argued that while the warning given informed him that his conviction “could” lead to deportation, it did not inform him that, under federal law, it “would” result in his deportation. Amado indicated that, as a consequence of his plea, the Immigration and Naturalization Service (INS) had initiated removal proceedings. He noted that, if they were successful, he would be permanently excluded from the United States. Amado claimed that, if he had known that entry of his plea would have resulted in his permanent exclusion from the United States, he would not have entered a plea and would have instead exercised his right to a jury trial.

Amado renewed his motion and filed a supplemental brief on February 8, 2008. That same day, the trial court denied Amado’s motion to vacate his conviction. The trial court stated: “The spirit and the language was--of the advisement was sufficient, I think, to satisfy section 1016.5 and on--at least on the merits of the motion, the motion will be denied.”

Amado filed a timely notice of appeal from the trial court’s order on March 5, 2008. (Pen. Code, § 1237, subd. (b).)

---

<sup>2</sup>

Penal Code section 1016.5, subdivision (a) provides in relevant part: “Prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall administer the following advisement on the record to the defendant: [¶] If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.”

This court appointed counsel to represent Amado on appeal on June 20, 2008.

### **CONTENTIONS**

After examining the record, counsel for Amado filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed December 24, 2008, the clerk of this court advised Amado to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. On January 23, 2009, Amado filed a letter indicating he wished to raise the following issues: “1. [He] was not properly advised by the trial court or [his] attorney of the immigration consequences of [his] plea. [¶] 2. The plea [he] entered jeopardizes the strong family ties [he has] in [the] United States. [¶] 3. [He] never committed this offense again.”

Amado’s statements are insufficient to warrant relief. As the trial court concluded, the advisements given to Amado regarding the immigration consequences of his plea were sufficient. With regard to his family ties, although it is unfortunate that deportation will separate him from members of his family, that is not a sufficient reason for vacating his plea. Finally, while it is admirable that Amado has not again sold or transported marijuana, that does not change the fact that on January 10, 1992, he sold 1.85 grams of marijuana to Los Angeles Police Officer Rubio Marcos.

## **REVIEW ON APPEAL**

We have examined the entire record and are satisfied Amado's counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

## **DISPOSITION**

The trial court's order denying Amado's motion to vacate the judgment entered following his plea of guilty to the sale or transportation of marijuana is affirmed.

***NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS***

CROSKEY, Acting P. J.

We concur:

KITCHING, J.

ALDRICH, J.